

# EXHIBIT 2

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18 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
19 **FOR THE COUNTY OF ALAMEDA**

20 KYTCH, INC.,

21 Plaintiff,

22 v.

23 JONATHAN TYLER GAMBLE; J.L. GAMBLE  
24 MANAGEMENT LLC DBA MCDONALD'S;  
25 TFGROUP LLC; AND TAYLOR  
26 COMMERCIAL FOODSERVICE, LLC DBA  
27 TAYLOR COMPANY,

28 Defendants.

Case No. **RG 21099155**

**COMPLAINT FOR DAMAGES,  
INJUNCTIVE RELIEF AND DEMAND  
FOR JURY TRIAL**

1. Breach of Contract
2. Tortious Interference of Contract
3. Misappropriation of Trade Secrets

[Filed Concurrently with Plaintiff's Ex Parte  
Application for TRO, OSC and Related  
Notice of Lodging Conditionally Under Seal]

**PUBLIC - REDACTS MATERIALS FROM CONDITIONALLY SEALED RECORD**

COMPLAINT

BY FAX

PRELIMINARY STATEMENT<sup>1</sup>

1. This is a case about corporate espionage and the extreme steps one manufacturer has taken to conceal and protect a multimillion-dollar repair racket.

2. McDonald's is best known for its world-famous burgers, fries, and broken ice cream machines.



**McDonald's** @McDonalds · Aug 11, 2020

we have a joke about our soft serve machine but we're worried it won't work

862

4.5K

29K

3. Despite McDonald's Corp. poking fun at its problematic machines, this is no laughing matter to the McDonald's franchise operators forced to shoulder the expensive maintenance and repair costs when the machines are out of commission.

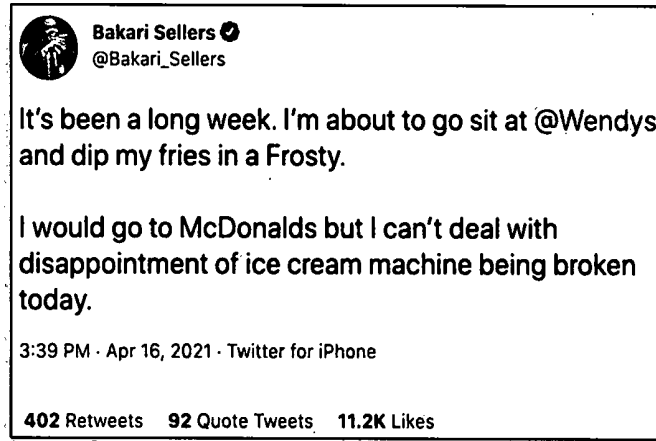
4. Back in 2003, McDonald's gave an effective monopoly to manufacturing giant Taylor Company ("Taylor") to provide soft-serve machines for its approximate 14,000 retail locations in the United States. The problem is Taylor designed its software so that only Taylor-certified technicians can service and repair the machines. Taylor's own documents confirm that in 2017 alone, 6,500 Taylor-certified technicians brought in almost \$80 million in revenue for parts and service support.<sup>2</sup>

5. This may explain why Taylor has failed to identify a global solution to fix the buggy machines. Especially in light of the fact that McDonald's customers across the country have taken to Twitter and other social media platforms to complain about the machines. One customer expressed that he was unwilling to go to McDonald's because, "I can't deal with disappointment of [the] ice cream machine being broken today."<sup>3</sup>

<sup>1</sup> Kytch pleads the following recitals with knowledge of its own conduct and on information and belief of the behavior of Defendants.

<sup>2</sup> The Middleby Corporation: Taylor Acquisition Overview, (May 18, 2018), <https://middlebycorporation.gcs-web.com/static-files/5bd70207-96b1-48bd-a4a2-70dce00a247a>.

<sup>3</sup> Bakari Sellers (@Bakari Sellers), Twitter (April 16, 2021, 3:39 p.m.) [https://twitter.com/Bakari\\_Sellers/status/1383143104941801474?s=20](https://twitter.com/Bakari_Sellers/status/1383143104941801474?s=20).



8           6.       For almost two decades, it appeared that Taylor's broken machines would never be  
9 fixed. Until a small California tech startup called Kytch, Inc. cracked the code in April 2019. During  
10 product testing and development, Kytch used a proprietary combination of hardware, software and  
11 machine learning to demystify the finicky machines.

12           7.       Kytch soon uncovered a repair racket whereby Taylor designed flawed code that  
13 *caused the machines to malfunction*. Whether Taylor intentionally designed these flaws or merely  
14 did not care enough to ensure bug-free code will become clear during discovery. Either way,  
15 Taylor's web of partners profited millions in repair fees for the malfunctions that it manufactured.

16           8.       A number of Taylor's customers at McDonald's have reported that Taylor's  
17 technicians made unauthorized changes to software that frequently resulted in expensive—and  
18 otherwise unnecessary—repairs.

19           9.       To maintain its lucrative repair and service market, Taylor employs a hidden  
20 "Technician's Menu" to conduct even basic maintenance on the machine. Until Kytch entered the  
21 marketplace, only Taylor-certified technicians had the tools and know-how to navigate the  
22 machines' volatile operations and software.

23           10.      That changed when Kytch launched its flagship device Kytch Solution in spring 2019.  
24 as part of a confidential product trial to limited fast-food restaurants. Kytch spent years developing  
25 a trade secret man-in-the-middle technology to unlock the cryptic machines ("Kytch Solution  
26 Device"). Kytch also designed an online system ("Kytch Solution Platform") for its customers to  
27  
28

1 manage and monitor their machines.<sup>4</sup> The Kytch Solution Platform is equipped with a user-friendly  
2 interface to finally simplify the difficult Taylor machines that were designed to fail.

3 11. Kytch originally agreed to provide its top-secret technologies and user interface to  
4 trial participants under strict non-disclosure and non-use agreements (the “Kytch Trial Agreement”  
5 and “Terms of Service”). The Kytch Trial was an overnight sensation, and media outlets reported  
6 on the innovative technology that promised to reduce the machines’ downtime and to consistently  
7 deliver more frozen treats to McDonald’s customers.

8 12. Because Kytch Solution reduces the need for Taylor service technicians to repair the  
9 machines, Kytch’s leadership was not surprised when Taylor attempted to obtain the  
10 Kytch Solution. First, one of Taylor’s distribution managers tried to purchase a device, but Kytch’s  
11 security protocol flagged and blocked the purchase. Then, a lawyer employed by Taylor’s outside  
12 counsel attempted to purchase the Kytch Solution. Kytch blocked this second attempt. After that,  
13 two private investigators associated with Taylor used aliases and dummy email addresses to get their  
14 hands on the device. Once again, Kytch canceled the orders.

15 13. As Kytch’s product trial expanded in 2020, it became the largest independent  
16 IoT/connectivity software vendor for the shake machine in the McDonald’s system. By all  
17 appearances, the Kytch Solution Device modernized the outdated soft-serve machines that had  
18 frustrated customers for years.

19 14. Based on this rapid growth, Kytch built a reputation as an emerging leader in the  
20 fast-growing IoT industry. Kytch was barreling towards a \$50 million valuation, and the company  
21 kicked off a \$10 million Series A fundraising round in October of 2020.

22 15. But everything changed after Tyler Gamble<sup>5</sup> (a major McDonald’s franchisee and  
23 leader of the group that works to introduce new products into McDonald’s restaurants) enrolled in  
24 the Kytch Trial.

25  
26 \_\_\_\_\_  
27 <sup>4</sup> The Kytch Solution Device and the Kytch Solution Platform are referred to collectively  
as “Kytch Solution.”

28 <sup>5</sup> J.L. Management Group and Jonathan “Tyler” Gamble are referred to collectively as  
“Gamble” and “Tyler Gamble.”

1           16. Gamble approached Kytch and explained that he was the head of McDonald's  
2 Equipment Team, the committee responsible for recommending new products to McDonald's Corp.

3           17. At first, Gamble appeared to support Kytch's mission; Gamble even indicated that  
4 he would push McDonald's to purchase Kytch Solution Device for all of its U.S. locations.

5           18. Kytch is informed and believes this was a ruse.

6           19. In reality, Kytch is informed and believes that Gamble was working hand-in-hand  
7 with Kytch's competitor Taylor to steal Kytch's trade secrets. As part of this unlawful scheme,  
8 Gamble breached the Kytch Trial Agreement and Terms of Service last summer by soliciting  
9 Kytch's most sensitive information, only to share it with Taylor through one of its distributors.

10           20. Kytch is informed and believes that Taylor's distributor shared Kytch's trade secrets  
11 with the manufacturing giant to enable Taylor to monitor Kytch's development. With insider access  
12 to Kytch's trade secret information, Taylor could stay one step ahead of Kytch's diagnostic  
13 capabilities.

14           21. On November 1, 2020, Kytch sent a message to Gamble (and no one else) [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]

21           22. Kytch is informed and believes that news of Kytch's operating system led to Taylor's  
22 decision to launch its own competing device rapidly to preserve its repair racket.

23           23. In mid-April, a Taylor spokesperson went on the record admitting that a distributor  
24 had obtained at least one Kytch Solution Device. Taylor has also failed to deny that, months earlier,  
25 its outside counsel and private investigators had used faked names to try to get their hands on  
26 Kytch Solution Device.  
27  
28

24. Tyler Gamble knew he was acting improperly. In February 2021, Tyler Gamble and his father tried to delete the electronic invitations they sent out to unauthorized third parties providing access to the Kytch Solution Platform.

25. These uses of Kytch's confidential information were unauthorized, they have cost Kytch untold millions of dollars, and they will certainly cause Kytch further damage in the future. Defendants have also been unjustly enriched through violating contractual obligations and by exploiting Kytch's confidential information.

26. Defendants' conduct has come close to destroying Kytch.

27. Accordingly, Defendants must make Kytch whole for the damage caused by their unlawful conduct, and the Court should, as required by the Kytch Trial Agreement and the Terms of Service, enjoin them from further using Kytch's confidential information and trade secrets.

#### **THE PARTIES**

28. Plaintiff Kytch, Inc. is a Delaware corporation with its principal place of business in Alameda County, California. Kytch is a subsidiary of Frobot, Inc.

29. Defendant Jonathan "Tyler" Gamble operates ten McDonald's restaurants in Tennessee and Mississippi. Gamble is an independent franchise owner, and he serves as the Equipment Team Lead for McDonald's National Supplier Leadership Council.<sup>6</sup> He owns and operates McDonald's restaurants through Defendant J.L. Gamble Management LLC, DBA McDonald's. Tyler Gamble and J.L. Gamble Management LLC are collectively referred to as "Tyler Gamble" and "Gamble."

30. Gamble enrolled in the Kytch Trial after executing the binding Kytch Trial Agreement and after representing that he and his company would not use Kytch's trade secrets to "build or support, and/or assist a third party in building or supporting products or services competitive" to Kytch. (Kytch Terms of Service, § 1(g).)

31. The Kytch Trial Agreement incorporates Kytch's binding Terms of Service, and those provisions, among other things, prohibit Gamble from "providing unauthorized access or

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<sup>6</sup> This complaint refers to the National Supply Leadership Council as the "NSLC," and the NSLC's Equipment Team as the "McDonald's Equipment Team."

1 exceeding authorized access to [Kytch's] products, services or any account.”<sup>7</sup> (Kytch Terms of  
2 Service § “Notice.”)

3 32. The contracts give Kytch the right to seek injunctive relief arising from Gamble’s  
4 breaches of their duties of confidentiality and their misuse of Kytch’s intellectual property rights.  
5 (Kytch Terms of Service § 13.)

6 33. Defendant Taylor Commercial Foodservice, LLC DBA Taylor Company is  
7 incorporated in Delaware, and it manufactures soft-serve machines in McDonald’s and other  
8 commercial kitchens.

9 34. Defendant TFGroup LLC is a Louisiana limited liability company that is a franchised  
10 distributor for Taylor. TFGroup LLC describes itself as utilizing “analytical advances to ensure  
11 speed of service, reduction of equipment downtime and labor savings.”

12 35. Taylor Company and TFGroup LLC (collectively the “Taylor Group”) directly  
13 compete with Kytch.

#### 14 JURISDICTION & VENUE

15 36. Each Defendant is properly subject to this Court’s jurisdiction, and they all conduct  
16 business in California. Defendants have sufficient minimum contacts with California, and otherwise  
17 purposely avail themselves of the markets in this State through the research and development of  
18 products in California, thereby rendering the exercise of jurisdiction by California courts permissible  
19 under traditional notions of fair play and substantial justice.

20 37. This Court has jurisdiction over Gamble because this action arises out of their  
21 business transactions with Kytch in California, and they have transacted business, and have caused  
22 injury to Kytch, in California.

23 38. Taylor Group is subject to personal jurisdiction in this state because they have  
24 conducted and conduct business in California. The acts alleged in this Complaint occurred and the  
25

26  
27 <sup>7</sup> Copies of the Kytch Trial Agreement and the Terms of Service that bind Gamble are  
28 attached as **Exhibit A**.



1 damages to Kytch were inflicted and occurred in substantial part in California and within  
2 Alameda County.

3 39. Gamble consented to jurisdiction and venue in the court of Alameda County,  
4 California, as the proper forum to litigate any disputes arising from and relating to the Kytch Trial  
5 Agreement and the Terms of Service.

6 40. Any attempt to remove this matter to federal court would be fraudulent and improper,  
7 among other reasons, because the Kytch Trial Agreement and Terms of Service contain forum  
8 selection clauses specifying that *state* courts, *i.e.*, the courts of Alameda and Santa Clara County are  
9 the proper forum and therefore there is not diversity among the citizenship of the parties.

### 10 **BACKGROUND FACTS**

#### 11 ***To Protect the Company's Trade Secrets and Confidential Information, Kytch's Trial*** 12 ***Agreement Contains Non-Disclosure and Non-Use Provisions.***

13 41. Kytch's data-driven product testing ultimately yielded next-generation IoT  
14 technology that cemented the company's status as a leader in the industry.

15 42. Through years of development and \$1.3 million of effort, Kytch has built expertise,  
16 proprietary insights, diagnostic tools, and notification systems for the growing "smart kitchen"  
17 marketplace.

18 43. In February 2020, Tyler Gamble first contacted Kytch and asked to enroll in the  
19 Kytch Trial. Because one of Kytch's key strategic advantages lies in its proprietary information,  
20 Kytch required Gamble to enter into a non-disclosure agreement to protect Kytch's trade secrets and  
21 confidential information. Gamble executed the Kytch Trial Agreement (the "NDA") on March 19,  
22 2020.<sup>8</sup>

23 This Agreement is effective as of 03 / 19 / 2020, 2020 (the "Effective Date"), by and  
24 between:

25 J Tyler Gamble  
26

27  
28 <sup>8</sup> The NDA refers to the Kytch Trial Agreement and the Terms of Service incorporated in that document.

1           44. The NDA reflects the fundamental nature of Kytch's and Gamble's business  
2 relationship. Kytch is in the midst of developing its solution to the broken machines with the need  
3 to collect more data for the Kytch Trial. Gamble is in charge of identifying new and innovative  
4 products for McDonald's, and the ice cream machines in his ten stores were constantly breaking  
5 down.

6           45. Gamble sought out Kytch's data-driven approach to fixing the machines. Kytch, on  
7 the other hand, needed to make sure that one of its chief assets—its innovative hardware and  
8 software were protected from competitors.

9           46. Kytch would never just give away its trade secrets for free or so that Gamble could  
10 use them for his benefit, much less to benefit Kytch's competitors in the rapid-paced IoT industry.  
11 The NDA memorializes how the parties came together around these competing interests: Gamble  
12 was obligated and agreed to keep confidential the information and devices Kytch provided, and he  
13 could use it only in furtherance of the Kytch Trial.

14           47. The NDA specifically states that "Kytch may seek injunctive or other equitable relief  
15 to protect its confidential information . . . *without the need to post bond or other surety.*" (Terms  
16 of Service § 15(c).)

17           48. With these contractual protections in place, Kytch gave Gamble access to a  
18 substantial amount of proprietary information and confidential documents. Kytch also sent several  
19 Kytch Solution Devices—each protected by the NDA—for Gamble to use at his McDonald's  
20 locations for one purpose: to support and further the Kytch Trial.

21           49. Kytch shared its confidential and proprietary hardware and software designs with  
22 Gamble. As explained further below, Kytch is informed and believes that Gamble betrayed Kytch,  
23 and his contractual obligations, when he used Kytch's own confidential information to compete  
24 against the company. This has caused irreparable harm to Kytch.

25           50. Kytch required that this information be protected with the NDA because this  
26 confidential information is at the heart of Kytch's business model and is what sets it apart from its  
27 competitors, specifically Taylor Group.

28

1           51. Kytch's proprietary materials offer a roadmap for a strategy that has never before  
2 been attempted in the soft-serve machine industry: using man-in-the-middle technology to  
3 communicate with the finicky machines and to stabilize volatile software, all while providing real-  
4 time notifications to customers. This offering reduced the need for restaurant operators to pay costly  
5 repairs fees to Taylor Group.

6           52. Kytch introduced the industry to the revolutionary notion that these industrial  
7 machines should be controlled by the restaurant owners and artificial intelligence, and that by  
8 demystifying the complicated machines and reducing the need for costly service technicians, Kytch  
9 could save its customers millions of dollars in recaptured revenue and reduced overhead. Kytch's  
10 cohesive strategy promises enormous returns, far in excess of current outputs from Taylor's  
11 technology.

12           53. Successfully executing this strategy would require a combination of innovative  
13 thinking, expertise in the fast-food industry, and sensitivity to customer needs, together with a  
14 willingness to invest significant time and resources into creating the analyses and conducting the  
15 product testing to turn the strategy into a thriving business. Since its inception, Kytch has invested  
16 time and effort building out, in painstaking detail, the Kytch Solution Device and the Kytch Solution  
17 Platform.

18           ***Taylor's Ice Cream Machines Are Notorious for Always Breaking Down.***

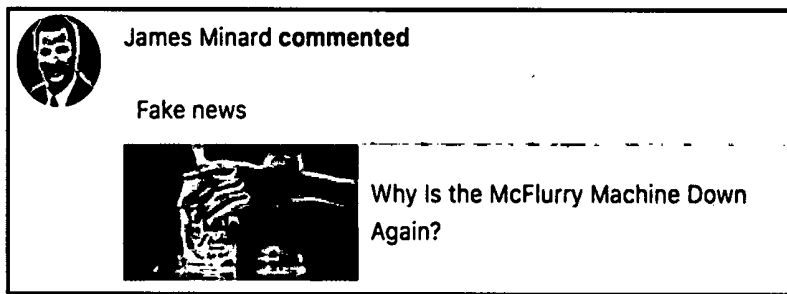
19           54. The majority of McDonald's restaurants are equipped with Taylor Model C602 soft-  
20 serve machines. This model is not available for purchase by the general public.

21           55. Although Taylor occupies a substantial share of the market, its machines have been  
22 described as unreliable and "notorious for constantly breaking down."

23           56. The machines' reputation for breaking led *The Wall Street Journal* to explain in a  
24 recent story that "[t]he interruption in ice cream, milkshake, and McFlurry service is so widespread  
25 that it has spawned an avalanche of social media complaints in the U.S. and abroad—and conspiracy  
26 theories."

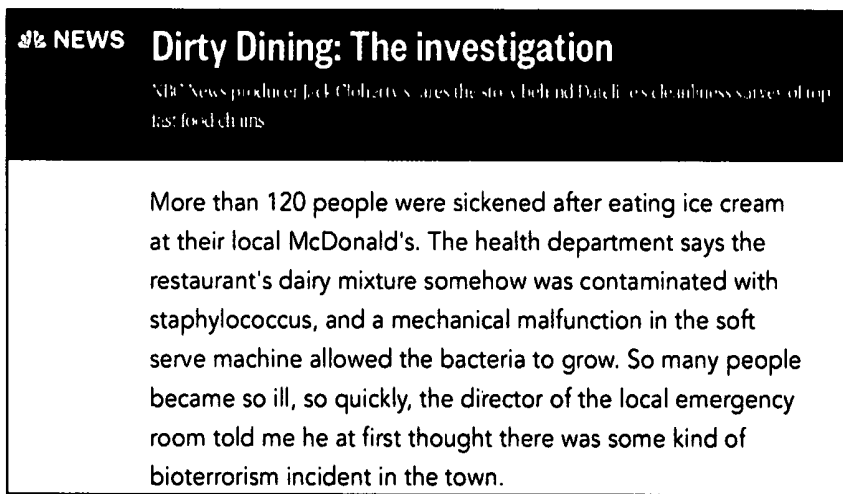
27           57. In response to the criticism, Taylor has tried to deflect responsibility despite  
28 widespread complaints across the world. Taylor's COO James Minard has referred to news

1 coverage about the machine malfunctions as “Fake news,” in what appears to be an attempt to  
 2 discredit *The Wall Street Journal’s* headline bearing the question, “Why is the McFlurry Machine  
 3 Down Again?”



9 58. The ridicule McDonald’s has received from the media because of the defective ice  
 10 cream machines is more serious than the whimsical headlines suggest because some of the problems  
 11 have alarming public health implications.

12 59. A recent study conducted by Dateline, for example, assessed the cleanliness of top  
 13 fast-food chains, including McDonald’s. According to that NBC News report, “[m]ore than 120  
 14 people were sickened after eating ice cream at their local McDonald’s.”<sup>9</sup>



23 60. Kytch’s analysis of its customer data revealed that a critical mass of Taylor’s  
 24 machines was equipped with a manual switch designed to bypass mandatory pasteurization and  
 25 brush cleanings. [REDACTED] of the machines in the Kytch Trial operated with this bypass, in violation

27 <sup>9</sup> Jack Cloherty, *Dirty Dining: The investigation* NBC News producer Jack Cloherty shares  
 28 the story behind Dateline’s cleanliness survey of top fast food chains, NBC News (Mar. 10, 2005),  
<https://www.nbcnews.com/id/wbna7149927>.

1 of public health agency and food safety regulations. Indeed, for years, Taylor's service manuals  
2 contained step-by-step instructions to bypass the regulations.<sup>10</sup>

3 61. Despite these issues, and in complete disregard of state and county inspection reports  
4 confirming that Taylor's machines breach safety protocols, Taylor's pattern of denialism continued  
5 for years.

6 62. But any remaining plausibility to Taylor's denial campaign evaporated after a  
7 software engineer launched [www.McBroken.com](http://www.McBroken.com) to compile statistics reflecting the number of  
8 McDonald's ice cream machines that are out of commission at any moment.

9 63. At the time of this writing, McBroken.com reports that more than 11% of the soft-  
10 serve machines at McDonald's restaurants in the United States are out of service. These machine  
11 outages have cost franchise operators millions of dollars in lost revenue.

12 64. Consequently, McDonald's franchisees have gone on record to explain that Taylor's  
13 "machines are temperamental and expensive to repair." McDonald's franchisees have also reported  
14 that some of the software updates installed by Taylor technicians cause even more glitches and  
15 expensive outages.

16 ***Kytch's Product Testing Reveals that Defects Were Built-in to Taylor's Machines.***

17 65. Kytch's approach to fixing the problematic Taylor machines has always been a data-  
18 driven, iterative process that relies on the collection and analysis of large amounts of data.

19 66. Before launching Kytch, founders Jeremy O'Sullivan and Melissa Nelson started  
20 Frobot, Inc. back in 2011. Frobot is a fully robotic frozen yogurt dispenser that produces made-to-  
21 order frozen confections. Frobot is designed to interact with soft-serve machines made by Taylor.

22 67. Through that venture, Frobot informed Taylor's leadership about its device that  
23 promised to augment the capabilities of Taylor's machines, including automation and increasing  
24 safety offerings.

25  
26  
27 <sup>10</sup> Many Taylor machines have a jumper placed on the W2 pins on the rear of the machine  
28 that disables necessary safety mechanisms. Taylor has been aware of this hazard for years but has  
taken no action to correct this defect. This violates NSF International's food safety requirements  
and may endanger consumers.

68. This innovation required years of product development and additional safety testing given that the process involves serving dairy products to the general public. Taylor's response to Frobot's prototype was positive, and years—and hundreds of thousands of dollars—of product development followed.

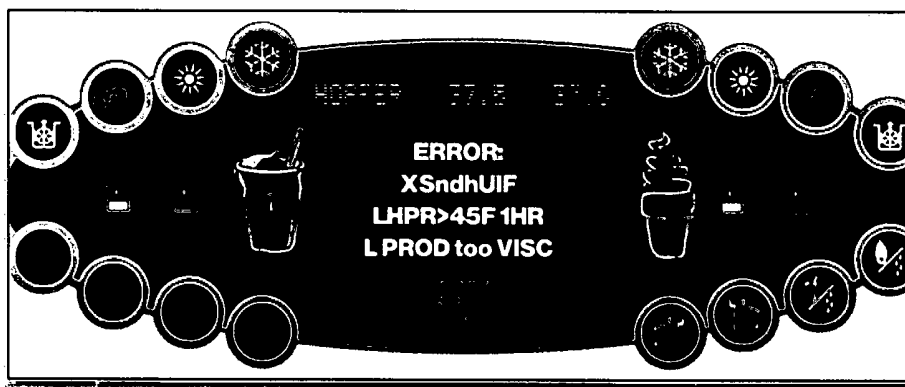
69. Frobot had a small fleet of Taylor machines, and Nelson and O'Sullivan soon learned that the only way to keep the machines up and running is through frequent and expensive service visits.

70. After only a few months of gathering data, it became clear to Kytch that Taylor's machines were not very robust, and the finicky software was constantly causing outages.

71. Kytch was founded in 2018 as a subsidiary of Frobot, and its original purpose was a safety add-on to the automated soft-serve machines. In contrast to Frobot's focus on automation capabilities, Kytch focused on data and software to optimize the soft-serve machines and reduce outages.

72. The Kytch Solution officially launched in July 2019 at Tesla's factory in Lathrop, California, before expanding to fast-food restaurants in the broader San Francisco area a short time later.

73. Kytch learned that Taylor machines are designed to prohibit users from accessing the fulsome "Technician's Menu" that operates the machines. Taylor's menu contains confusing messages that leave McDonald's franchisees frustrated and unable to operate the machine, causing them to "call the technician" for even minor problems with their Taylor machines. One example of Taylor's cryptic error messages is below.



***Kytch's Innovative Technology, Trade Secrets, and Confidential Information***

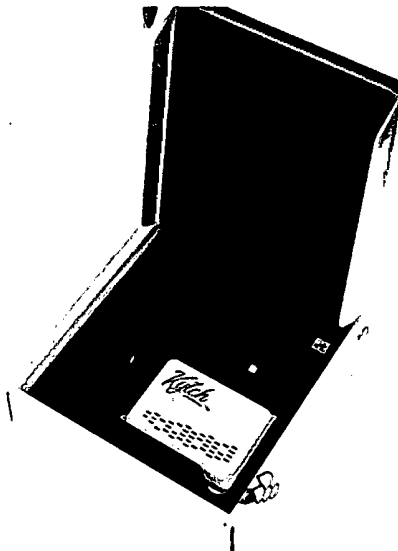
74. Kytch's flagship invention is known as the Kytch Solution Device: powered by a tiny Raspberry Pi computer with software to understand the communication between the machine's logic board and interface system.

75. There is nothing like the Kytch Solution Device on the market, and the ability of a competitor to access and test the device would allow the competitor to obtain an extraordinary head start in the creation of a competitive device.

76. The Kytch Solution Device is an easy-to-install device that can be bolted on the soft-serve machines. When mounted on the machine and connected to Kytch's software and online platform, Kytch's IoT technology and data retrieval processes enable restaurant operators to see exactly what is going on with their machines. Kytch's intensive data-analytics and automated processes work in tandem to optimize machine performance, and Kytch can actually detect errors in the machines and notify users in real-time before the machines malfunction.

77. When the Kytch Solution is connected to the internet, the software sends messages to www.Kytch.com.

78. The Kytch Solution is depicted below in the "Kytch Kit."



79. The Kytch Solution works with custom-made [REDACTED]

1 [REDACTED]

2 [REDACTED]

3 80. [REDACTED]

4 [REDACTED]

5 81. Kytch's technology, wrap-around software, and online platform improve the limited  
6 and simplistic interfaces of many appliances. Taylor machines are designed so that only technical  
7 experts are able to navigate their internal workings. Kytch disrupted this limitation by creating user-  
8 friendly interfaces that are accessible to people without any technical training.

9 82. Generally, Kytch collects three types of proprietary data for the soft-serve machines.

10 83. *First* [REDACTED]

11 [REDACTED]

12 [REDACTED] [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 84. The second datatype is related to machine settings, including: [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

26 85. Both datatypes reflect unique selections of data for at least two reasons. Taylor makes  
27 it extremely difficult, if not impossible, for owners of the device to be able to access this data without  
28 the assistance of a trained technician. Moreover, it was only after extensive analysis of massive



1 amounts of data that Kytch identified the above factors as relevant for making decisions on the  
2 machine.

3 86. The third datatype is production data. This includes [REDACTED]  
4 [REDACTED] To capture the necessary data, Kytch employs scripts to  
5 programmatically enter the menu without human assistance. This is unique because normally a  
6 human operator must press a *minimum of 12 buttons* just to open the Manager's Menu.

7 87. Another innovative component of Kytch's trade secrets is the remote method for  
8 interacting with kitchen devices that Kytch pioneered using a universal master operating system to  
9 serve as the user interface and communication system with kitchen appliances. This is discussed in  
10 greater detail below.

11 88. All of this is made possible through a man-in-the-middle cable and software that  
12 securely inserts the Kytch Solution Device for reading and writing data to and from the control panel  
13 assembly of the appliance, without exposing users, employees, and technicians to the potential of  
14 high voltage shocks or other related hazards.

15 89. The man-in-the-middle software code allows Kytch [REDACTED]  
16 [REDACTED]  
17 [REDACTED] The software then communicates messages from the device to Kytch's cloud  
18 system for data analytics and navigation.

19 90. Kytch constantly reviews customers' reported errors, and all of these readings and  
20 related notifications Kytch provides about the issues are available for customers to review on the  
21 Kytch Solution Platform. By detecting anomalous appliance behavior, Kytch builds preference  
22 models and enhances its business analytics to predict the needs of its customers.

23 91. Part of Kytch's proprietary technology is discriminating between the substantial  
24 amounts of data that we gather from customers' machine usage. Kytch sends only select machine  
25 metrics, typically based on thresholds that Kytch has set based on the historic performance and error  
26 rates of the machines connected to Kytch's systems. This information includes: [REDACTED]

27 [REDACTED]  
28 [REDACTED] warning of

1 potential damage to equipment caused by human error; [REDACTED]  
2 [REDACTED]  
3 [REDACTED] (7) identifying lack of training  
4 and improper use of the machines; and (8) advanced troubleshooting based on customer data across  
5 the Kytch Solution Platform.

6 92. If the machine's AUTO function is disabled, [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]

13 93. The machines' heat cycle commonly fails, and this is often not addressed by  
14 restaurant staff in a timely manner. Alternatively, the staff lacks the technical know-how to mitigate  
15 this failure. Kytch Assist functions as a human-assisted automation service. Kytch manages heat  
16 cycle [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]

20 94. The machines' heat cycle commonly fails [REDACTED]  
21 [REDACTED]  
22 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
23 [REDACTED]

24 95. Taylor's glycol holding temperature is set at 165 degrees [REDACTED]  
25 [REDACTED]

26 96. Kytch's data has determined [REDACTED]  
27 [REDACTED] [REDACTED]  
28 [REDACTED]

1 [REDACTED]  
2 [REDACTED] Kytch informs customers [REDACTED]

3 [REDACTED]  
4 97. Kytch also sends productivity alerts [REDACTED]

5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED] Kytch sends a message to the user [REDACTED]

8 [REDACTED]  
9 98. Kytch provides real-time alerts on [REDACTED]

10 [REDACTED]  
11 [REDACTED]

12 99. Kytch also provides informative warning alerts in order to prevent damage to the  
13 machine [REDACTED]

14 *The Kytch Online Platform & Notification System*

15 100. Working in tandem with Kytch's data retrieval and data analytics systems, Kytch's  
16 proprietary and confidential online platform at [www.Kytch.com](http://www.Kytch.com) ("Kytch Solution Platform")  
17 provides customers with more ways to understand and interact with the soft-serve machines.

18 101. There is nothing like the Kytch Solution Platform on the market, and the ability of a  
19 competitor to access and observe in how the Kytch Solution Platform operates in real time would  
20 allow a competitor to obtain an extraordinary head start in the creation of a competitive device.

21 102. Kytch sends its customers daily reports regarding machine usage. One example is  
22 the Servings Summary, which contains the number of shakes and soft-serve products that were  
23 produced each day. This information can only be produced using the proprietary script used to  
24 programmatically open the menu employed by the Kytch Solution. [REDACTED]

25 [REDACTED]

26 [REDACTED]

27 [REDACTED]

28

Kytch		
Serrvings Summary May 26, 2020		
Kytch Name	Shake	Soft Serve
Taylor	88	91
Amherst	51	42
Cane Run	77	94
Portland	78	87
*servings count procurement interrupted		
© 2020 Kytch, Inc. Privacy Policy   Terms & Conditions		

103. Another function available on Kytch.com is “Kytch Rewind.”

The visualization is similar to a video rewind function.

104. The genesis for Kytch Rewind took place during product testing at Tesla. Kytch needed a way to correlate the data from the machines to identifiable recurring events—either with the machine itself, or through human interactions.

105. So Kytch

This monitoring enabled Kytch to troubleshoot errors in a data-driven manner.

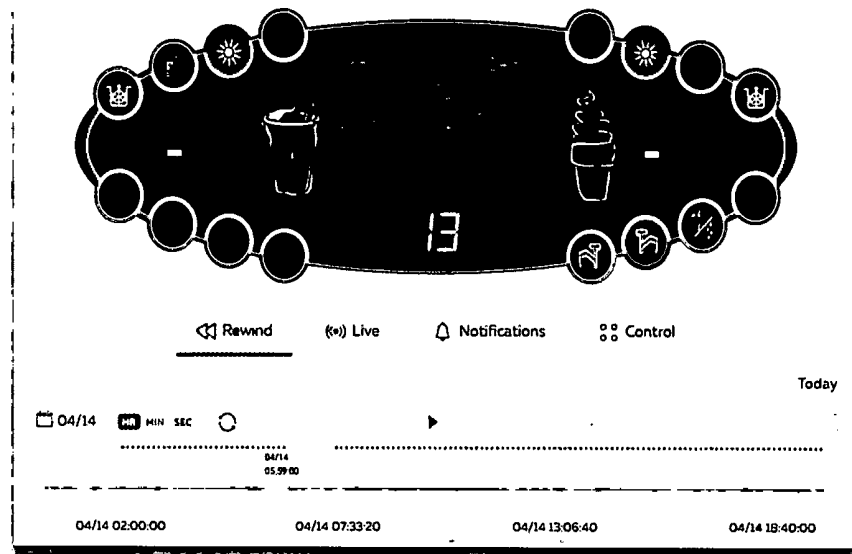
106. Specifically, whether a particular outage was caused by human error—such as loading frozen ice cream mix into the machine—or a software bug.

107. When Kytch realized how useful this tool was, it developed Kytch Rewind to further empower our customers to better understand their machines.

108. Kytch Rewind allows the user

109. [REDACTED]

110. Reviewing these patterns subsequently allows Kytch to continue to optimize the machines and select the optimal parameters for functioning, and to avoid outages and costly service appointments. A screenshot of the rewind function is below:



111. In this exemplar, Kytch Rewind shows the user the contents of the machine's menu at 5:59 a.m. ET. The machine was in "HEAT MODE" while the right hopper had low mix.

112. Another feature of Kytch's notification system is Kytch Assist. Kytch Assist uses human-assisted experience to make decisions to keep Taylor machines up and running. [REDACTED]

<sup>11</sup> The JP2 pin of Taylor's C713 machine hides the hopper temperature by default. [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 113. The interaction of these files and the methodology and processes for keeping the  
 4 system stable and functional have taken a substantial amount of time and money to develop and  
 5 perfect. An example notification from Kytch Assist is depicted below.

6  
 7 **Kytch Assist**

10:50 AM

8 Heat cycle failed because the left hopper reached 135.7 degrees instead  
 9 of the required 151 degrees during the HEAT phase. Kytch restarted the  
 10 heat cycle to reduce downtime. Potentially caused by overfilling the  
 11 hopper.

12 114. This notification describes a common error that frustrates many Kytch clients: the  
 13 heat cycle fails because the hopper missed the target temperature required by the heating phase by  
 14 approximately one degree.

15 115. Based on [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED] Kytch Assist [REDACTED]  
 18 [REDACTED] to avert machine outages. If Kytch takes action on the machine, [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]

23 [REDACTED] The purpose of these notifications is to educate  
 24 the user about their machine's issues, [REDACTED]  
 25 [REDACTED]

26 116. This is important because Kytch's data analysis has confirmed [REDACTED]  
 27 [REDACTED]  
 28 [REDACTED]

1 [REDACTED] This means less  
2 downtime than waiting for an employee to get around to pressing the button during a lunch rush.

3 117. Additionally, Kytch's data capture exposes when employees misuse the soft-serve  
4 machines. For example, [REDACTED]

5 [REDACTED]

6 [REDACTED] [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 118. Kytch notifies the user, [REDACTED]

13 [REDACTED] [REDACTED] [REDACTED]

14 [REDACTED] Kytch notifies

15 the user [REDACTED] [REDACTED]

16 [REDACTED]

17 [REDACTED] Kytch has developed the ability to [REDACTED]

18 [REDACTED]

19 [REDACTED] Kytch examines [REDACTED]

20 [REDACTED] to warn customers [REDACTED]

21 [REDACTED]

22 119. Kytch also notifies users when there are potential issues with [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED] [REDACTED]

26 [REDACTED]

27 [REDACTED] [REDACTED]

28 [REDACTED]

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 120. Kytch also notifies users when [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED] For example, Kytch notifies the user [REDACTED]  
23 [REDACTED] The notification also directs the user to use the Kytch.com web  
24 application [REDACTED]  
25 [REDACTED] Kytch may notify [REDACTED]  
26 [REDACTED]  
27  
28

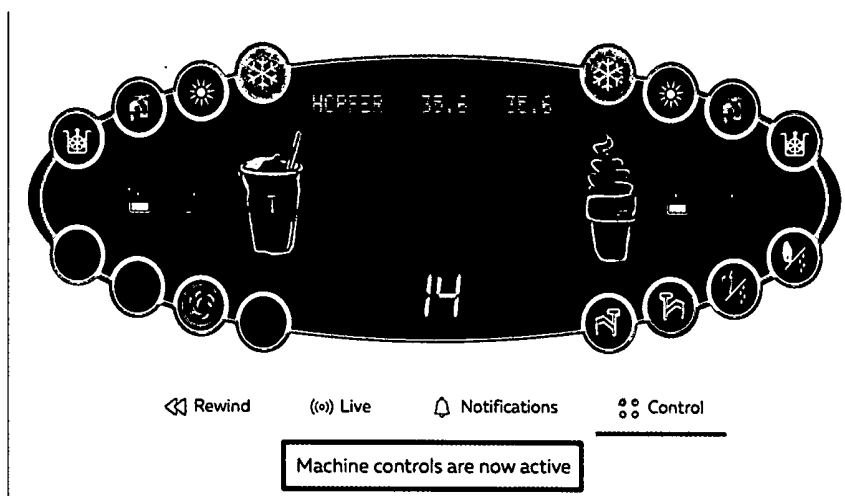


121. One of the most important features of Kytch's platform is the Remote Control application and interface. This permits Kytch's customers to access Taylor's machines and to optimize their machines even when they are not on site.

122. The Remote Control creates a power shift because instead of relying on a network of Taylor technicians, one operator or in-house technician can now access all of their machines from one location.

123. Kytch's innovative solutions reduce franchisees' need to hire Taylor technicians by providing, for the first time, previously unavailable data and control mechanisms in the palm of each user's hand.

124. Kytch's Remote Control is designed to capture the front panel of the Taylor machines, and it allows users to quickly understand how to use the equipment. Kytch also provides [REDACTED] The image below depicts the remote-control feature on Kytch's online platform.



125. After many hundreds of hours of data analysis on hundreds of machines, Kytch has determined that many of the issues with the machines can be corrected by using the controls and menu on the Taylor machine.

126. For example, thermistor probes measure temperatures within the machine, and Kytch discovered that [REDACTED]

1 [REDACTED]  
2 [REDACTED]  
3 127. Kytch also discovered a cryptic message, "E7," that displayed on the "brush clean"  
4 counter, because Taylor's software was unable to display a three-digit number. Kytch's software  
5 determined that "E7" indicates that 147 machine hours had passed since the freezer door was last  
6 removed. However, despite this cryptic message, the machines continued to operate and serve  
7 customers. In simple terms, this means that the machines were designed to serve ice cream without  
8 complying with the mandatory brush-cleaning schedules required by public health and safety  
9 standards. [REDACTED]

10 [REDACTED]  
11 128. [REDACTED]

12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 129. [REDACTED]

16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 130. Customers often praise the proactive flagging of software bugs Kytch provides  
21 through Kytch's notification systems and data analytics. Additionally, Kytch tracks all temperatures  
22 and alerts across each machine connected to our system. Because of the hundreds of devices on its  
23 network, Kytch can analyze the data and flag software errors within Taylor's product.

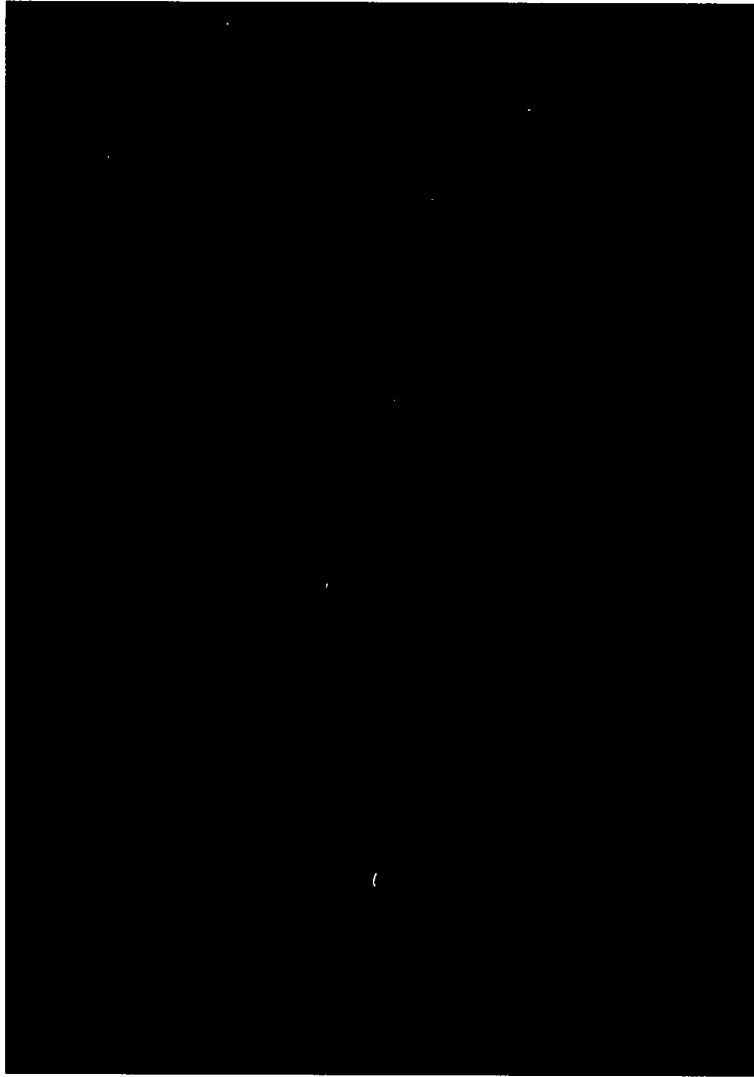
24 131. When Kytch uncovers common or disruptive bugs, it notifies its customers about the  
25 issues, and it attempts to identify and implement automation features to counteract the errors.  
26 Kytch's ultimate goal was to create a stable software version that was direct-to-consumer and  
27 included updates to eliminate these bugs.  
28

1           132. One such error is [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]

8           133. Kytch flags this problem for its customers in advance, providing them with detailed,  
9 user-friendly instructions on how to fix the issue. [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]

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134.

[Redacted text block consisting of multiple lines of blacked-out content]



1        135. Kytch's real-time notifications, sent via text and email, include mix alerts, Kytch  
2 Health Alerts, alerts for heat cycle failures, downtime, weekly summaries, and issue-spotting alerts.  
3 Kytch Health Alerts explain malfunctions and provides tips on how to address each issue.

4        136. Kytch also provides explanations for heat cycle failures [REDACTED]  
5 [REDACTED]  
6 [REDACTED] Kytch sends [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]

10        137. One of Kytch's Weekly Summary notifications is depicted below. The weekly  
11 summary email [REDACTED] that appear  
12 on the front panel of the machine.



13  
14  
15  
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19  
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21  
22  
23        138. Through the Kytch.com platform, users are able to see [REDACTED]  
24 [REDACTED] This information, alone, is incredibly valuable. And in  
25 the aggregate, it enables Kytch to identify problems and potential issues long before Taylor and its  
26 certified technicians.  
27  
28

1           139. Importantly, Kytch.com also allows customers to invite team members to manage  
2 and navigate the online interface.

3           140. The data Kytch has collected has enabled the company to perform market  
4 assessments to anticipate shifting demands, to develop pricing strategies, to decide when and where  
5 to launch products, and it informs Kytch's investments in product development and new  
6 technologies.

7           141. Indeed, based on Kytch's robust data retrieval and analytics capabilities, Kytch  
8 possessed considerably more data about Taylor's machines, performance histories, and performance  
9 optimization than Taylor itself.

10           ***Taylor Tries to Intercept the Kytch Solution to Access Kytch's Trade Secrets.***

11           142. Kytch launched the Kytch Solution Device in April 2019. Taylor started making  
12 efforts to obtain the device almost immediately. The first attempt was made by Heather Jordan,  
13 Taylor's Distributor Technology Manager, who placed an online order to purchase the Kytch  
14 Solution via www.Kytch.com. Ms. Jordan listed Taylor's corporate address in Rockton, Illinois, as  
15 her shipping address.

16           143. Because Kytch's founders had worked with Taylor's management in the past—and  
17 because Kytch vets the orders placed on its website to block competitors trying to steal the  
18 company's valuable trade secrets and Confidential Information—Jeremy O'Sullivan emailed  
19 Ms. Jordan to obtain more information before approving the order.

20           144. Kytch canceled the order when Ms. Jordan failed to respond.

21           145. The following month, a lawyer employed by Taylor's outside legal counsel  
22 Brinks Gilson attempted to purchase the Kytch Solution through Kytch's website. Kytch reviewed  
23 the order and canceled the purchase based on the connection to Taylor, and because Kytch is  
24 resolved to keep confidential its trade secrets and related Confidential Information.

25           146. After these two attempts were not successful, at least two private investigators—  
26 who, upon information and belief, were also acting on behalf of Taylor—used assumed names to  
27 try to purchase the Kytch Solution Device several more times.

28

1           147. Kytch's security precautions flagged and thwarted these initial attempts from Taylor  
2 and its confederates to obtain the Kytch Solution. But these efforts to obtain Kytch's intellectual  
3 property provide further evidence that Kytch's innovative product has substantial economic value.

4                           *The Kytch Trial Expands to McDonald's in Fall 2019.*

5           148. Kytch customers were overjoyed to see their volatile Taylor machines modernized.  
6 Customer goodwill grew as Kytch reduced the cost of ownership by minimizing Taylor repair costs.  
7 Franchise operators reported increased revenue from their frozen offerings, and Kytch continued to  
8 spread like wildfire.

9           149. As explained above, the iterative nature of Kytch's innovations made the Kytch  
10 Solution smarter as it gathered more data about Taylor's machines. This means that with more  
11 runtime, the Kytch Solution becomes *more* efficient at reducing downtime and associated service  
12 costs.

13           150. Kytch spread to McDonald's in the fall of 2019. In October of that year, Kytch was  
14 featured at the National Owners Association conference in Dallas, Texas, and it showcased the  
15 Kytch Solution in front of the largest association of independent U.S. McDonald's franchise  
16 operators.

17           151. These independent franchisees control and operate several trade organizations,  
18 including the NSLC. The NSLC collaborates with McDonald's supply chain leadership and its  
19 "Equipment Team"—led by Tyler Gamble—provides valuable insight to McDonald's concerning  
20 product innovations to integrate into McDonald's system.

21           152. One of the key focus areas for the Equipment Team is to identify solutions for  
22 McDonald's soft-serve machine problem through the "McFlurry Task Force," also known as the  
23 "Shake Machine Reliability Project."

24           153. Kytch would learn that several of its trial participants had top positions within the  
25 NSLC, including the NSLC Chair and Vice Chair Jon Kelley and Eric Wilson, NSLC Equipment  
26 Team Lead Tyler Gamble, NSLC Competitive Advantage Team Lead Larry Miller, and Logistics  
27 Team Lead Laura Bucar.

28

1           154. Despite enrolling numerous independent McDonald's franchisees in 2019 and 2020,  
2 Kytch prohibited corporate-owned-and-operated McDonald's locations from signing up for the  
3 Kytch Trial. Because Kytch did not have a non-disclosure agreement in place with  
4 McDonald's Corp., the corporate-owned locations lacked the localized authority to enter into the  
5 Kytch Trial Agreement.

6           155. As a result, some McDonald's representatives tried to circumvent Kytch's security  
7 by obscuring the fact that they worked at corporate-owned locations. McDonald's Corp.'s Regional  
8 Deployment Manager Michael Cousins emailed Kytch saying that he was "[i]nterested in the  
9 product."

10           156. A short time later, McDonald's Operations Technology Professional Josh Drake  
11 attempted to enroll in the Kytch Trial, and he did not disclose that he was employed by  
12 McDonald's Corp. or that he was trying to obtain devices on behalf of McDonald's Corp.

13           157. Kytch denied his application after determining the stores in Drake's application were  
14 corporate-owned McDonald's locations.

15           158. In all, Kytch rejected approximately 40 corporate-owned McDonald's locations that  
16 attempted to enroll in the Kytch Trial.

17                           ***Tyler Gamble Infiltrates Kytch's Product Trial.***

18           159. By 2020, McDonald's franchise operators enrolled in the Kytch Trial to test the  
19 Kytch Solution at restaurants in Arkansas, California, Connecticut, Georgia, Hawaii, Idaho, Illinois,  
20 Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota,  
21 Mississippi, Montana, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon,  
22 Pennsylvania, South Carolina, Tennessee, Texas, Washington, and Wisconsin.

23           160. As a result of this massive expansion, Kytch is informed and believes that it became  
24 the largest independent IOT/connectivity software vendor for the shake machine in the McDonald's  
25 system. By all appearances, the Kytch Solution was a viable remedy to many of the problems that  
26 had troubled Taylor soft-serve machines and frustrated customers for years.

27           161. In February 2020, news outlets reported on Kytch's success.  
28



# **McDonald's ice cream machines may never break down on you again – thanks to new machine**

Feb 12 2020, 19:42 ET | Updated: Feb 12 2020, 23:07 ET

## **New device may prevent McDonald's ice cream machines from breaking**

By WWAY News - February 12, 2020 11:28 AM

## **McDonald's and Burger King franchisees are raving about a new device that can update their notoriously broken soft-serve machines**

Shelby County Feb 11, 2020 12:31 AM



## **A New Device Promises to Keep McFlurry Machines Up and Running**

Already popping up in some restaurants, Kytch is hoping to end the scourge of broken down McDonald's soft-serve machines.

By Mike Pomranz Updated February 13, 2020

162. After the first of these news reports were published, Tyler Gamble sent a message to Kytch, expressing interest in enrolling in the product trial: "I'm a McDonald's owner and am the Equipment team lead for the U.S. I'm seeing lots of buzz about your equipment and would like to speak with someone to better understand its possible use in our restaurants."

163. Because Taylor was unable to obtain the Kytch Solution through its employees, its lawyers, or its private investigators, Kytch is informed and believes that Taylor worked with McDonald's franchisees, including Tyler Gamble, to infiltrate the Kytch Trial.

164. A short time later, Kytch CEO Jeremy O'Sullivan had a conversation with Gamble and Eric Wilson, NSLC's Vice Chair and prior McDonald's Equipment Team Lead.

165. During this conversation, Gamble said he was familiar with Kytch's ability to navigate, search and fine-tune the inner workings of Taylor's machines. Gamble, along with NSLC Chair and Vice Chair Jon Kelley and Eric Wilson participated in the Kytch Trial a short time later.

166. Tyler Gamble was eager to obtain the Kytch Solution. Gamble also offered to serve as the liaison between Kytch and the fast-food giant, promising to solidify Kytch's relationship with McDonald's.



**Tyler Gamble**  
NSLC Equipment Team Lead



**Eric Wilson**  
NSLC Vice Chair



**Jon Kelley**  
NSLC Chair

167. It appeared, early on, that Gamble was making good on his promises to promote Kytch. He said that he was serving as a go-between for Kytch with McDonald's corporate, and he said that he wanted to help the company expand to more McDonald's locations.

***Gamble Breaches the Kytch Trial Agreement by Sharing Confidential Information with Taylor's Distributor and Misappropriating Trade Secrets.***

168. In conversations with Kytch, Gamble endorsed Kytch's innovative technology, and he appeared to be a promising partner for the fast-growing start-up.

169. By the fall of 2020, Gamble had promised Kytch that he would recommend the Kytch Solution to every McDonald's franchise operator in the United States.

170. But on October 19, 2020, Tyler Gamble sent a peculiar message to Jeremy O'Sullivan about Kytch's Remote Control capabilities. Gamble asked whether there was "a way to ensure that no one using the Kytch device remotely accesses the machine while a technician may be working on it? This is a big concern with M[cDonald's] H[ead]Q[uarters]."

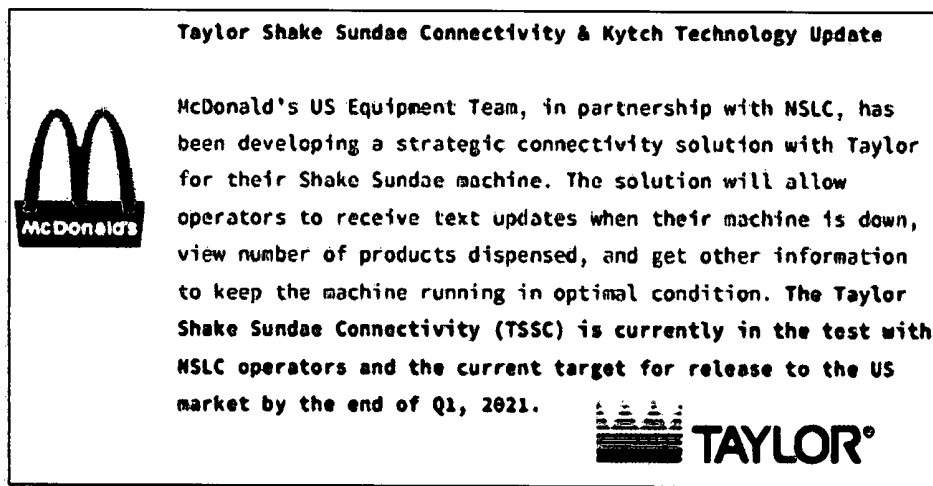
171. O'Sullivan explained the "layers of protection" that guard against this concern: "**first**, the machine should be powered off and unplugged before any work is started. This is standard safety for any equipment." O'Sullivan continued. "**Second**, there's a sensor on the freezer door, [so] that when the freezer door is removed [it] prevents the motor from turning on. **Third**, we do have a mechanism in place that disables any automation when a user takes control of the front panel by pressing any buttons."

172. O'Sullivan closed by explaining that the Kytch Solution "has been tested and certified for safety to UL standards by Intertek labs."

173. Gamble replied: "Thanks!"

174. O'Sullivan also shared a video explaining that the Kytch Solution's protocols protected against this "safety issue."

175. Taylor and McDonald's subsequently announced Taylor and Gamble's Equipment Team were preparing to release "Taylor Shake Sundae Connectivity (TSSC)." According to the description, TSSC would be released in Q1 2021, and TSSC's product offered features that map to Kytch's.<sup>12</sup>



176. Kytch would later learn that Tyler Gamble had been using the Kytch Solution to assist the Taylor Group.

177. Kytch recently discovered that Tyler Gamble violated the Kytch Trial Agreement by sharing the Kytch Solution Device and Platform to unauthorized third parties, specifically, TFGroup LLC.

178. TFGroup LLC is a franchised servicer and distributor for Taylor and its machines. On its LinkedIn page, TFGroup LLC describes itself as "[a] leader in the foodservice equipment segment, TFGroup utilizes analytical advances to ensure speed of service, reduction of equipment downtime and labor savings."<sup>13</sup>

<sup>12</sup> Upon information and belief, TSSC later became "Open Kitchen," a device developed by Taylor affiliate Powerhouse Dynamics. Both companies are owned by Middleby Corporation.

<sup>13</sup> "TFGROUP EXPANDING TAYLOR BRAND INTO ARKANSAS AND N. LOUISIANA MARKETS," LinkedIn, April 16, 2021, [https://www.linkedin.com/posts/tfgcompanies\\_tfgroup-expanding-taylor-brand-into-arkansas-activity-6788613873491603456-1Zam](https://www.linkedin.com/posts/tfgcompanies_tfgroup-expanding-taylor-brand-into-arkansas-activity-6788613873491603456-1Zam).

1           179. Kytch's investigation determined that on May 27, 2020, Tyler Gamble's  
2 Kytch Solution identified as "Brownsville" went offline. The device remained offline for eight  
3 months, and when Kytch questioned Gamble about its downtime, he claimed that the Taylor  
4 machine had an issue with one of its compressors.

5           180. One week after Gamble's Brownsville Kytch Solution Device went offline, Kytch  
6 issued a real-time alert from Gamble's Kytch Solution identified as Stonebrook 1. The alert stated  
7 "L PRODUCT TOO VISC" was occurring frequently.

8           181. Kytch sent [REDACTED]  
9 [REDACTED]  
10 [REDACTED] Kytch also provided  
11 specific tips on how to correct the problem.

12           182. This problem was appearing in numerous Taylor machines throughout Kytch's  
13 online network. But a short time after Kytch provided this notification to Gamble, the "PRODUCT  
14 TOO VISC" alert rarely appeared in any Taylor machine connected to the Kytch Platform.

15           183. This is circumstantial evidence that Tyler Gamble shared the message with  
16 Taylor Group, and that Taylor subsequently adjusted its programming to account for the error.

17           184. When Gamble's Brownsville device was connected to the internet again in February  
18 2021, its SD card was 90% full. The device log indicates that someone had been accessing the  
19 Kytch Solution Device, and that the Device was powered on and used for weeks after going offline.  
20 However, according to the device log, the Kytch cables were disconnected periodically so the device  
21 could not retrieve information or connect to the internet. The uninterrupted reverse engineering of  
22 the Kytch Solution Device evidenced by this behavior would provide the Taylor Group with a  
23 dramatic head start in designing a competing device. There is nothing like the Kytch Solution in  
24 the marketplace. Kytch restricts who has access to its devices because the ability to reverse engineer  
25 the device exposes Kytch's trade secrets.

26           185. In April 2021, a spokesperson from Middleby Corporation—Taylor's parent  
27 company—confirmed that a "Tennessee distributor reported to Taylor that its servicer removed a  
28

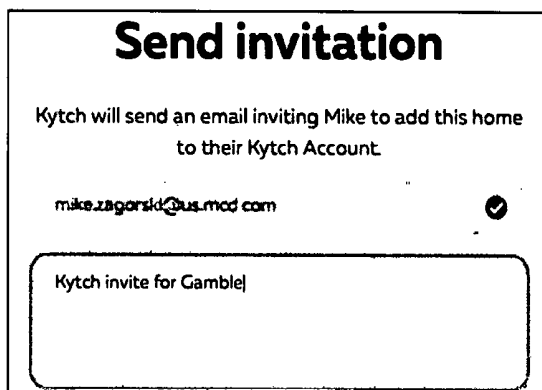
Kytch device” from one of Kytch’s trial participant’s stores. Upon information and belief, this “Tennessee distributor” is TFGroup LLC, and the trial participant is Tyler Gamble.

186. A short time after disconnecting the Brownsville Kytch Solution Device, Tyler Gamble invited someone named “Matt Wilson,” using the telephone number for Blaine Martin, who serves as TFGroup LLC’s Managing Partner, to access Kytch. Upon information and belief, the registered name “Matt Wilson” may be an alias or an attempt to obscure the fact that Blaine Martin is associated with the unauthorized account access.

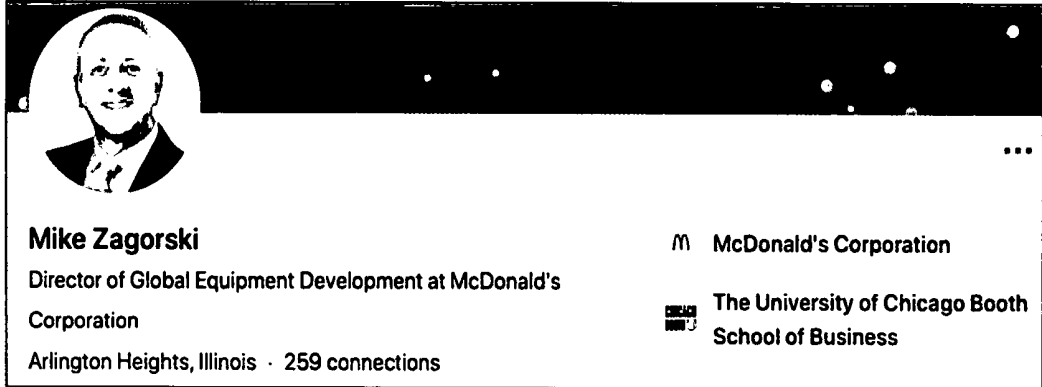
187. This account tied to TFGroup LLC obtained access to Kytch’s Confidential Information and trade secrets through the Kytch Solution Device and Platform. This includes access to all historic notifications, the Remote Control—and ultimately Kytch Rewind—using Gamble’s account. The data Gamble allowed the Taylor Group to Access is attached as **Exhibit B** and the information represented by these data is attached as **Exhibit C**, all of which was generated and is contained on the Kytch Solution Platform. It would have taken years, millions of dollars, and a vast trial program for Gamble or the Taylor Group to obtain these data.

188. Kytch has forensically confirmed that the fake account associated with the Taylor Group was used to access the Kytch Solution Platform on multiple occasions and the unauthorized access from the TFGroup LLC account continued through January 17, 2021.

189. Kytch’s investigation also determined that Gamble unlawfully invited Mike Zagorski to access Kytch’s trade secrets and Confidential Information. The invitation was sent from Gamble’s account and it says “Kytch invite for Gamble.”



190. Mike Zagorski is the Director of Global Equipment Development at McDonald's Corp. and Kytch did not authorize Gamble to invite Zagorski to access Kytch's interface. Kytch's investigation has not uncovered evidence that Mr. Zagorski accepted the invitation.



191. On January 29, 2021, right around the time they were contacted about another Business Insider article covering Kytch, Tyler Gamble and his father Jeff Gamble both logged in to the Kytch Platform and deleted the users (including Blaine Martin and william\_p@eplus.net) that they had invited to access Kytch's trade secret information.

192. Despite registering his Kytch devices for use in Tennessee and Mississippi, Kytch's forensic records confirm that the Kytch Solutions Gamble ordered have been accessed—likely by Taylor Group—in Little Rock, Arkansas; Ponchatoula, Louisiana; and New Orleans, Louisiana.

193. By using the Kytch Solution at these unauthorized locations, Gamble breached the Kytch Trial Agreement.

194. While contractually partnering with Kytch, Gamble was, in fact, stealing Kytch's Confidential Information and trade secrets in the marketplace and passing them to Taylor Group.

***Taylor Group Misappropriates Kytch's Trade Secrets.***

195. After Taylor's distributor TFGroup LLC gained access to Kytch's trade secrets and Confidential Information, Kytch is informed and believes that Taylor benefitted from the misappropriation of trade secrets because TFGroup shared the information with Taylor. Taylor Group knew that the information was subject to secrecy agreements and, Kytch is informed and believes, Taylor Group induced Tyler Gamble to breach his secrecy obligations to gain access to Kytch's confidential information and trade secrets.

1        196. Once its distributor had obtained the Kytch Solution Device, Taylor targeted Kytch's  
2 customers—who Taylor knew to be bound by NDAs—and induced them to enroll in Taylor's  
3 product trial. Specifically, according to Taylor's own statements, the McDonald's Equipment Team  
4 was developing Taylor's competing product. Three of Kytch's customers have served on the  
5 Equipment Team: David Balducci, Eric Wilson, and Tyler Gamble. Additionally, Jon Kelley—  
6 another Kytch customer who oversees the equipment team—is also testing Taylor's competing  
7 product.

8        197. Separately, Kytch's investigation revealed more suspicious activities from trial  
9 participants connected to McDonald's NSLC. Sellia Group executed the Kytch Trial Agreement on  
10 August 17, 2020, and it operates 18 locations in Massachusetts and Rhode Island, not far from the  
11 headquarters of Powerhouse Dynamics.

12        198. David Balducci works through the Sellia Group, and they are members of  
13 McDonald's Equipment Team.

14        199. On March 20, 2021, Sellia Group's Kytch account was accessed from the Chicago,  
15 Illinois, and the Bronx, New York, using a VPN, before logging in from Milford, Massachusetts,  
16 the area where the account was registered.

17        200. On November 1, 2020, Kytch sent the following message to Gamble.

18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]

21        201. Kytch would later learn that TFGroup had access to Tyler Gamble's account and,  
22 thus, this message. Taylor Group knew that Kytch's operating system "KytchOS" presented an  
23 existential threat to Taylor's service and repair scheme.

24        202. TFGroup is a distributor for Taylor, but Taylor maintains control over software  
25 development and updates related to the machines. Kytch is informed and believes that TFGroup  
26 was, at all times, working in concert with Taylor to misappropriate Kytch's trade secrets.



203. Potential investors and customers alike have pointed to Taylor's conduct as a primary basis for why they will not invest in Kytch. Kytch's communications with at least one investor—Benhamou Global Ventures—stalled after news of Taylor's misconduct became public.

204. And one of Kytch's most trusted advisors—Narbeh Derhacopian—was forced to pull back conversations with other investors based on the uncertainty flowing from Defendants' misappropriation of trade secrets.

***Taylor's Competing Product Is Markedly Similar to the Kytch Solution.***

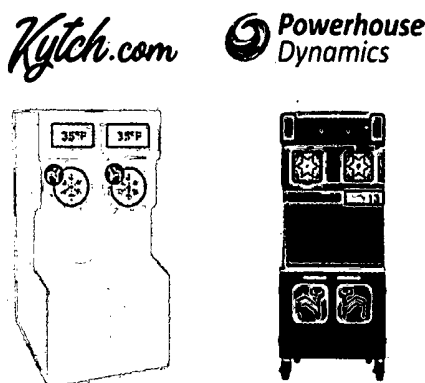
205. Although initial reports indicated that Taylor would be releasing its Taylor Shake Sundae Connectivity ("TSSC") in Q1 of 2021, the device has not yet been released.

206. Upon information and belief, the TSSC product is being rolled out through a Taylor-affiliate entity called Powerhouse Dynamics and its "Open Kitchen" concept.

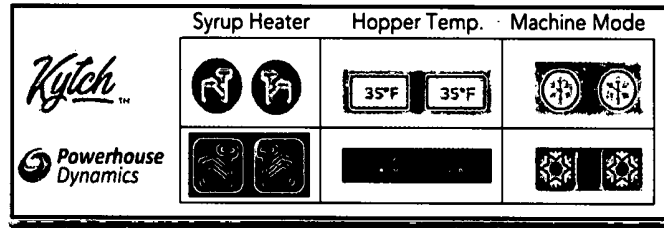
207. In January of 2021, Powerhouse Dynamics released images of the new device, and its offerings and trade dress is similar to the machine depicted in a Kytch user-video that was released years earlier:

208. Specifically, of the hundreds of device functions within the respective products, the three functions Powerhouse Dynamics decided to animate in its marketing materials are identical to the functions depicted in Kytch's rendering.

209. The rendering from Powerhouse Dynamics bears a striking resemblance to Kytch's earlier drawing.







210. Additionally, although the competing device from Powerhouse Dynamics has not yet been released, information about the product that is publicly available demonstrates that all of the features in the Powerhouse Dynamics device are already within Kytch's product offerings.

Features	Kytch.com	Powerhouse Dynamics
Servings Reports	✓	✓
Real-Time Text Alerts	✓	✓
Machine Status Updates	✓	✓
Machine History	✓	✓

211. Powerhouse Dynamics's product offers servings reports which resemble Kytch's method for programmatically opening the menu to retrieve the data at a specified time each day, saving the data, and displaying the data on a website or email notification.

212. Much like the Kytch Solution's Rewind feature, Powerhouse Dynamics offers a visual representation of the machine's time on various modes.

213. Powerhouse Dynamics also offers real time alerts via text message on soft and hard locks presented on the front panel of the machine. Kytch's innovations involve reading messages on the screen and sending real-time alerts regarding those messages.

214. In its current form, the Taylor machine is incapable of connecting to the internet. Therefore, Powerhouse is likely adding a computing module (raspberry pi or the like) that has wifi capabilities. Just like the Kytch Solution.

215. Powerhouse Dynamics's version of Kytch references all of Kytch's landmark features, its design, and several components that were subject to binding non-disclosure agreements and that were not publicly available.

216. The fact that Powerhouse Dynamics graphics highlight the display of the hopper temperatures provides further evidence of overlap from Kytch's earlier offering. Displaying hopper

temperatures is *not* permissible in the default setting of the Taylor machines. Indeed, the display of hopper temperatures deviates from Taylor service manuals. Kytch's innovation was delivering its users information related to hopper temperatures, and this fact was only shared as Confidential Information to trial participants.

217. Finally, Powerhouse Dynamics's website indicates that the competing device is being tried out with McDonald's franchise operator and Equipment Team co-lead Louis Buono, Jr.

## **FIRST CAUSE OF ACTION**

### **Breach of Written Contract**

#### **(Gamble)**

218. Kytch incorporates all of the above paragraphs as though fully set forth herein.

219. The Kytch Trial Agreement was a valid and existing contract at all times during and after Gamble's involvement with Kytch and imposed binding contractual obligations on Gamble at all relevant times and as a condition of Gamble's participation in the Trial.

220. The Kytch Trial Agreement also contains the following confidentiality undertaking: "You agree, both during the term of this Agreement and for a period of five years after termination of this Agreement, to hold Kytch's Confidential Information in strict confidence using no less than a reasonable degree of care, not to disclose Kytch Confidential Information to any third party (other than your users) and not to use Kytch Confidential Information for any purpose other than your evaluation of the Solution as part of the Trial."

221. The Agreement defines "Confidential Information" as "aspects of [Kytch's] Products and information relating to its features, specifications, functionality and performance." Gamble breached this clause by: (a) participating in the development of the competing Taylor Group device known as TSSC/Open Kitchen; (b) assisting in the disassembly, reverse engineering, and distribution of at least the Brownsville Kytch Solution Device; (c) granting the Taylor Group, and potentially others, access to the Kytch Solution Platform.

222. The Kytch Trial Agreements further prohibits Gamble from taking any of the following actions:

"You shall not, and shall not cause or permit others to:

- 1 • remove or modify any Solution markings or any notice of Kytch's or its licensors' proprietary rights;
- 2
- 3 • modify, make derivative works of, disassemble, reverse compile, reverse engineer, reproduce, distribute or republish all or any part of the Solution, or otherwise access
- 4 or use the Solution in order to build or support, and/or assist a third party in building
- 5 or supporting, products or services competitive to any Kytch Solution;
- 6
- 7 • disclose results of any benchmark tests or performance tests of the Kytch Solution without Kytch's prior written consent;
- 8
- 9 • perform or disclose any of the following security testing of the Solution (or associated systems, services or infrastructure): network discovery, port and service
- 10 identification, vulnerability scanning, password cracking, remote access testing, or
- 11 penetration testing; and
- 12
- 13 • license, sell, rent, lease, transfer, assign, distribute, display, host, outsource, disclose, permit timesharing or service bureau use, or otherwise commercially exploit or make
- 14 the Kytch Solution available to (or use such Solution for the benefit of) any third
- 15 party."
- 16

17 223. Gamble breached this clause by: (a) participating in the development of the

18 competing Taylor Group device known as TSSC/Open Kitchen; (b) assisting in the disassembly,

19 reverse engineering and distribution of at least the Brownsville Kytch Solution Device; and (c)

20 granting the Taylor Group, and potentially others, access to the Kytch Solution Platform.

21 224. Upon information and belief, Gamble improperly took and continues to retain Kytch

22 "Proprietary Information" to develop products and to otherwise compete against Kytch.

23 225. Upon information and belief, Gamble and his company improperly took and continue

24 to retain Kytch's Confidential Information for the additional purpose of enriching themselves in

25 breach of the Kytch Trial Agreement.

26 226. Kytch is entitled to recover from Gamble the damages he caused by breaching the

27 Kytch Trial Agreement and the Terms of Service.

28

1           227. The amount of such damages cannot be determined at this time but will be proven at  
2 trial. Kytch is further entitled to recover from Gamble the gains, profits, and advantages that Gamble  
3 obtained as a result of these breaches. Kytch is currently unable to ascertain the full extent of these  
4 gains, profits, and advantages but will prove the value thereof at trial.

5           228. Kytch is informed and believes that Gamble is continuing to breach the Kytch Trial  
6 Agreement.

7           229. By reason of the ongoing breaches, Kytch has and will suffer great and irreparable  
8 harm and damage, which harm and damage will be difficult to ascertain, and Kytch will be without  
9 an adequate remedy at law.

10          230. Gamble acknowledged in the Terms of Service contract that: "Kytch may seek  
11 injunctive or other equitable relief to protect its confidential information and intellectual property  
12 rights or to prevent loss of data or damage to its servers in any court of competent jurisdiction and  
13 You agree that Kytch may do so without the need to post bond or other surety."

14          231. Kytch's ability to provide comprehensive explanations of the machines' errors is  
15 made possible through years of product testing and through hundreds of machines connected to  
16 Kytch's platform. The data yield from these interactions provides Kytch a competitive advantage  
17 because Kytch was testing and evaluating Taylor's machines to a greater extent than Taylor, even  
18 before the trials expanded to McDonald's locations.

19          232. Kytch has flagged defects and bugs with Taylor's software, including the daylight  
20 savings bug that causes heat cycle failure, a software version that makes the barrels too cold and  
21 causes interruptions of functionality, and the tendency of the machines' heat cycle target  
22 temperatures to change on a nightly basis.

23          233. Maintaining this information as confidential is essential to Kytch's ability to compete  
24 in the market of IoT technology. These fields are characterized by rapid technological advances  
25 and intense competition. If a competitor were to obtain details about Kytch's technology or related  
26 commercial information, that competitor could significantly harm Kytch by using Kytch's own  
27 technology, know-how, and other details about these products to compete directly with Kytch  
28 without having to spend the capital or time that Kytch invested in developing such technologies.

234. If Kytch's competitors continue to obtain access to Kytch's Confidential Information, those competitors will benefit significantly from the knowledge gained through that access by directing their product development and marketing efforts to frustrate Kytch's plans. This strategic advantage to Kytch's competitors could, in turn, severely harm Kytch.

235. Kytch's research and development is conducted under rigorous conditions to maintain the secrecy of those activities and the products themselves. Kytch carefully controls all information relating to these projects. The Kytch development teams expend substantial time and energy to ensure that the process remains secret. Further, Kytch has spent multiple years working on secret products and methods that have never been discussed publicly.

236. The information and physical devices misappropriated by Defendants are comprised of confidential information about Kytch technology, its online interface and security processes, and confidential Kytch documentation. All of this material comprises Kytch trade secrets. In violation of Kytch's rights, the Defendants misappropriated Kytch's confidential information in the improper and unlawful manner as alleged herein.

237. Defendants' misappropriation of Kytch's confidential, proprietary, and trade secret information was intentional, knowing, willful, malicious, fraudulent, and oppressive. Defendants have attempted and continue to attempt to conceal their misappropriation.

238. As the direct and proximate result of Defendants' conduct, Kytch has suffered and, unless Defendants' conduct is stopped, will continue to suffer, severe competitive harm, irreparable injury, and significant damages, in an amount to be proven at trial.

239. Because Kytch's remedy at law is inadequate, Kytch seeks, in addition to damages, temporary, preliminary, and permanent injunctive relief to recover and protect its confidential, proprietary, and trade secret information and to protect other legitimate business interests. Kytch's business operates in a competitive market and will continue suffering irreparable harm absent injunctive relief.

## **SECOND CAUSE OF ACTION**

### **Tortious Interference of Contract**

**(Taylor Group)**

1 || 240. Kytch incorporates all of the above paragraphs as though fully set forth herein.

2           241. On March 19, 2020, Kytch and Gamble entered into a valid and binding contract  
3 whereby, in exchange for Gamble’s covenants of nondisclosure and secrecy, Kytch agreed to  
4 provide its trade secrets and Confidential Information—including Kytch Solution Device and  
5 Kytch Solution Platform—to Gamble to use for the sole purpose of furthering the Kytch Trial.

242. Taylor Group had knowledge of the contract as Tyler Gamble publicly discussed his participation in Kytch's product trial, and upon information and belief, discussed the same with Taylor Group.

243. Taylor Group acted intentionally to interfere with and induce Gamble to breach the Kytch Trial Agreement by providing it with access to the Kytch Solution Device and Platform.

244. Taylor Group pushed Gamble to breach the Kytch Trial Agreement, using their influence within McDonald's to encourage Gamble, a McDonald's franchisee. Taylor Group's intentional actions caused Kytch considerable damage by disrupting its contractual relationship with Gamble, caused Kytch's performance under the contract more expensive and difficult, and Taylor Group's misconduct has resulted in the breach of the Kytch Trial Agreement.

245. Taylor Group's intentional actions caused Kytch substantial damage by disrupting its contractual relationship with Gamble, allowing the Taylor Group to launch a competing device and driving investors away from Kytch.

19           246. As a direct and proximate result of Taylor Group's actions, Kytch has suffered  
20 severe and substantial economic harm.

### THIRD CAUSE OF ACTION

### Violation of California Uniform Trade Secrets Act

23      247. Kytch incorporates all of the above paragraphs as though fully set forth herein.

24 248. The Kytch Solution's proprietary design and software, as alleged in Paragraphs 21,  
25 60, 79, 80, 83, 84, 86, 89, 91, 91-99, 102, 103, 105, 106, 108, 109, 112, 115-120, 124, 126-129,  
26 132-134, 136-138, 181, and 200 above, and the Declaration of Melissa Nelson at **Exhibits 1, 2, 7,**  
27 and at Paragraphs 17, 18, 21, 23, 24, 27, 30, 31, 33, 34, 36, 39, 41, 42, 44, 45, 48, 51-60, 63-65, 69,

1 73, 75, 77-79, 82, 116, and 132 constitute trade secrets under the California Uniform Trade Secrets  
2 Act.

3 249. Kytch is informed and believes that Gamble provided a Kytch Solution Device and  
4 access to the Kytch Solution Platform to the Taylor Group for at least eight months, during which  
5 time Kytch's trade secrets were misappropriated.

6 250. Kytch has not disclosed its trade secret information and the information has actual or  
7 potential independent economic value from not being generally known to the public or other persons  
8 who could obtain economic value from their disclosure or use.

9 251. Kytch has undertaken efforts that are reasonable under the circumstances to maintain  
10 the secrecy of the trade secrets at issue.

11 252. Defendants knew or should have known under the circumstances that the  
12 information misappropriated by Defendants were confidential trade secret materials.

13 253. Defendants knew or should have known under the circumstances that the information  
14 misappropriated by Defendants were trade secret materials.

15 254. The California Uniform Trade Secrets Act ("CUTSA") prohibits the unfair  
16 competition—and associated irreparable harm to business interests—that is caused by product trial  
17 participants improperly using or disclosing documents, information, inventions, and business  
18 strategies that require substantial investment, innovation, and countless hours to develop.

19 255. Gamble has misappropriated Kytch Trade Secrets by: (1) using the Kytch Solution  
20 Device and the Kytch Solution Platform in the development of TSSC/Open Kitchen; (2) allowing  
21 the Taylor Group to access, use and reverse engineer the Brownsville Kytch Solution Device; (3)  
22 allowing the Taylor Group full access to the Kytch Solution Platform over an extended period of  
23 time; and (4) giving a McDonald's executive access to the Kytch Solution Platform over an extended  
24 period of time.

25 256. The Taylor Group has misappropriated Kytch Trade Secrets by: (1) using the Kytch  
26 Solution Device and the Kytch Solution Platform in the development of TSSC/Open Kitchen; (2)  
27 accessing, using, and reverse engineering the Brownsville Kytch Solution Device; and (3) accessing  
28 over an extended period of time the Kytch Solution Platform.



1           257. As a direct and proximate result of Defendants' conduct, Kytch is threatened with  
2 injury and has been injured in an amount in excess of the jurisdictional minimum of this Court, and  
3 that will be proven at trial.

4           258. Kytch has also incurred, and will continue to incur, additional damages, costs and  
5 expenses, including attorney's fees, as a result of Defendants' misappropriation. As a further  
6 proximate result of the misappropriation and use of Kytch's trade secrets, Defendants were unjustly  
7 enriched.

8           259. The aforementioned acts of Defendants were willful, malicious, and fraudulent.  
9 Kytch is therefore entitled to exemplary damages under California Civil Code § 3426.3(c).  
10 Defendants' conduct constitutes transgressions of a continuing nature for which Kytch has no  
11 adequate remedy at law.

12           260. Unless and until enjoined and restrained by order of this Court, Defendants will  
13 continue to retain and use Kytch's trade secret information to enrich themselves and divert business  
14 from Kytch. Pursuant to California Civil Code § 3426.2, Kytch is entitled to an injunction against  
15 the misappropriation and continued threatened misappropriation of trade secrets as alleged herein  
16 and further asks the Court to restrain Defendants from using all trade secret information  
17 misappropriated from Kytch and to return all trade secret information to the company.

18           261. Pursuant to California Civil Code § 3426.4 and related law, Kytch is entitled to an  
19 award of attorneys' fees for Defendants' misappropriation of trade secrets.

20           262. As the direct and proximate result of Defendants' conduct, Kytch has suffered and,  
21 if Defendants' conduct is not stopped, will continue to suffer, severe competitive harm, irreparable  
22 injury, and significant damages, in an amount to be proven at trial.

23           263. Because Kytch's remedy at law is inadequate, Kytch seeks, in addition to damages,  
24 temporary, preliminary, and permanent injunctive relief to recover and protect its confidential,  
25 proprietary, and trade secret information and to protect other legitimate business interests.

26           264. Kytch's business operates in a competitive market and will continue suffering  
27 irreparable harm absent injunctive relief.  
28



265. Kytch has been damaged by all of the foregoing and is entitled to an award of exemplary damages and attorney's fees.

## **PRAYER FOR RELIEF**

**WHEREFORE**, Kytch respectfully requests the following relief:

266. That the Court enter judgment in Kytch's favor and against Gamble on Counts I and III;

267. That the Court enter judgment in Kytch's favor and against the Taylor Group Defendants on Counts II and III;

268. That Defendants, their officers, agents, servants, employees, and all persons in active concert or participation with them, be preliminarily and permanently restrained and enjoined from misappropriating, disclosing, or using Kytch's Confidential Information and trade secrets;

269. That Defendants be ordered to recall and surrender all material and trade secrets wrongfully misappropriated or converted;

270. That Kytch recover compensatory damages for Defendants' wrongdoing in an amount to be established at trial, together with pre-judgment and post-judgment interest at the maximum legal rate;

271. That Kytch recover an award of punitive and other appropriate exemplary damages, disgorgement, restitution, pre-judgment and post-judgment interest as permitted by statute and contract;

272. That Kytch recover attorneys' fees and the costs of suit herein; and

273. Such other and further relief as the Court may deem to be just and proper.

**DEMAND FOR JURY TRIAL** Kytch hereby demands trial by jury for all causes of action, claims, or issues in this action that are triable as a matter of right to a jury.

1 Dated: May 7, 2021

IRELL & MANELLA LLP

2  
3 By: /s/ Jason Sheasby  
4 Jason Sheasby SBN 205455  
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Appearance *Pro Hac Vice to Be Filed*  
Attorneys for Plaintiff Kytch, Inc.

**VOLUMINOUS DOCUMENT**

**PAGES OMITTED**